

House Bill 150

By: Representatives Bruce of the 61st, Pruett of the 149th, Roberts of the 155th, Burns of the 159th, Lindsey of the 54th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 1 of Title 10, Chapter 1 of Title 35, Article 4 of Chapter 18 of Title 50, and Title 51 of the Official Code of Georgia Annotated, relating to selling and other trade practices, general provisions for law enforcement officers and agencies, inspection of public records, and torts, respectively, so as to enact provisions relating to the reproduction of arrest booking photographs; to prohibit charging a fee for removal of arrest booking photographs from a publication or website; to provide for a civil cause of action; to require law enforcement agencies to copyright or watermark certain photographs; to authorize copyrighting of public records; to provide for the right of publicity in an individual's persona; to provide for definitions; to prohibit the use of an individual's persona for commercial purposes without authorization; to provide for applicability; to provide for consent and transfer of an individual's rights; to provide for a civil action; to provide for damages; to provide for exceptions; to provide for criminal penalties; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other trade practices, is amended by adding a new article to read as follows:

"ARTICLE 35

10-1-950.

No person who publishes an individual's arrest booking photograph shall charge a fee for removing such photograph from the person's publication or website. Any individual who suffers damage or injury as a result of a violation of this Code section shall have a cause of action to recover actual damages, punitive damages, if appropriate, and reasonable attorney's fees."

SECTION 2.

Chapter 1 of Title 35 of the Official Code of Georgia Annotated, relating to general provisions for law enforcement officers and agencies, is amended by revising Code Section 35-1-9, which is reserved, as follows:

"35-1-9.

Every law enforcement agency in this state that arrests or takes a person into custody and photographs such person shall copyright such photograph or watermark such photograph prior to placing it on such agency's website or otherwise making such photograph available to the public ~~Reserved.~~"

SECTION 3.

Article 4 of Chapter 18 of Title 50 of the Official Code of Georgia Annotated, relating to inspection of public records, is amended by adding a new Code section to read as follows:

"50-18-78.

Nothing in this article shall preclude an agency from obtaining and enforcing trademark or copyright protection for any public record, and any agency is hereby specifically authorized to obtain and enforce such protection in accordance with federal law; provided, however, that this authorization shall not restrict public access to or fair use of copyrighted materials and shall not apply to writings which are merely lists of other compilations."

SECTION 4.

Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding a new chapter to read as follows:

"CHAPTER 5A

51-5A-1.

As used in this chapter, the term:

(1) 'Commercial purpose' means the use of or reference to an aspect of an individual's persona in any of the following manners:

(A) On or in connection with a place, product, merchandise, goods, services, or other commercial activities not expressly exempted under this chapter;

(B) For advertising or soliciting the purchase of products, merchandise, goods, services, or other commercial activities not expressly exempted under this chapter;

(C) For the purpose of promoting travel to a place; or

(D) For the purpose of fund raising.

(2) 'Institution of higher education' means a public or private postsecondary educational institution in this state.

(3) 'Name' means the actual, assumed, or clearly identifiable name of or reference to a living or deceased individual that identifies the individual.

(4) 'Persona' means an individual's name, voice, signature, photograph, image, likeness, or distinctive appearance, if any of these aspects have commercial value.

(5) 'Right of publicity' means the property right in an individual's persona to use the individual's persona for a commercial purpose.

(6) 'Trier of fact' means the jury or, in a nonjury action, the court.

(7) 'Written consent' includes written, electronic, digital, or any other verifiable means of authorization.

51-5A-2.

(a) Except as otherwise provided in subsections (b) through (e) of this Code section, a person shall not use any aspect of an individual's persona for a commercial purpose:

(1) During the individual's lifetime;

(2) For a period of 60 years after the date of the individual's death; or

(3) For a period of ten years after the date of death of a member of the Georgia national guard or the armed forces of the United States.

(b) A person may use an individual's persona for a commercial purpose during the individual's lifetime if the person first obtains the written consent to use the individual's persona from a person specified in Code Section 51-5A-5. If an individual whose persona is at issue has died, a person may use the individual's persona for a commercial purpose if either of the following applies:

(1) The person first obtains the written consent to use the individual's persona from a person specified in Code Section 51-5A-5 who owns the individual's right of publicity;
or

(2) The name of the individual whose persona is used was the name of a business entity or a trade name at the time of the individual's death.

(c) Subject to the terms of any agreement between a person specified in Code Section 51-5A-5 and a person to whom that person grants consent to use an individual's right of publicity, a consent obtained before the death of an individual whose persona is at issue shall remain valid after the individual's death.

(d) For purposes of this Code section:

(1) A use of an aspect of an individual's persona in connection with any news, public affairs, sports broadcast, or account shall not constitute a use for which consent is required under subsection (a) of this Code section; and

(2) A use of an aspect of an individual's persona in connection with any political campaign and in compliance with Title 21 shall not constitute a use for which consent is required under subsection (a) of this Code section.

(e) The owners or employees of any medium used for advertising, including but not limited to a newspaper, magazine, radio or television network or station, cable television system, billboard, transit ad, and global communications network, by whom any advertisement or solicitation in violation of this Code section is published or disseminated shall not be not liable under this Code section or Code Section 51-5A-7 unless it is established that those owners or employees had knowledge of the unauthorized use of the persona as prohibited by this Code section.

51-5A-3.

Except as otherwise provided in Code Section 51-5A-9, this chapter shall apply only to the right of publicity in the persona of an individual whose domicile or residence is in this state on or after the effective date of this Code section and to the right of publicity in the persona of an individual who died on or after the effective date of this Code section and whose domicile or residence was in this state on the date of the individual's death.

51-5A-4.

The right of publicity in an individual's persona is freely transferable and descendible, in whole or in part, by any of the following means:

(1) Contract;

(2) License;

(3) Gift;

(4) Trust;

(5) Will; or

(6) Operation of the laws of intestate succession applicable to the state administering the majority of the real and personal property of an individual who died intestate, regardless of whether that state recognizes the right of publicity as a property right.

51-5A-5.

(a) Except as otherwise expressly provided in an agreement transferring an aspect of an individual's right of publicity, only the following persons may grant consent to use an individual's persona for a commercial purpose:

(1) A person or persons, including the individual whose right of publicity is at issue, who collectively own more than 50 percent of the individual's right of publicity, subject to the terms of any other licenses regarding that right of publicity; or

(2) A person, including a licensee of the individual's right of publicity, who is expressly authorized in writing to grant consent by a person or persons specified in paragraph (1) of this subsection.

(b) A person or persons specified in subsection (a) of this Code section may do one or both of the following:

(1) Grant a person or persons consent to use all or part of an individual's right of publicity for a commercial purpose; or

(2) Limit, restrict, or place conditions on how a person or persons to whom consent is granted pursuant to this Code section may use an individual's right of publicity.

51-5A-6.

(a) The following persons may bring a civil action to enforce the rights set forth in this chapter:

(1) A person or persons, including an individual whose right of publicity is at issue, who collectively own all of an individual's right of publicity, subject to any licenses regarding that right of publicity;

(2) A person, including a licensee of an individual's right of publicity, who is expressly authorized in writing by the owner or owners of an individual's right of publicity to bring a civil action; or

(3) Except as otherwise expressly provided in an agreement transferring an aspect of an individual's right of publicity and subject to subsection (c) of this Code section, a person to whom ownership or any portion of ownership of an individual's right of publicity has been transferred.

(b) Before bringing a civil action under this Code section, a person who owns less than all of an individual's right of publicity shall notify the individual whose right of publicity is the subject of the proposed action, if living, by regular mail addressed to the last known address of that individual. The person also shall notify any persons to whom the individual's right of publicity has been transferred of the proposed civil action by the following means:

(1) Regular mail addressed to the last known address of each transferee; or

(2) If the address of the transferee is not known, by publication in the newspaper in which the official advertisements of the county are published for the county in which the individual whose right of publicity is the subject of the proposed civil action resides, or, in the case of a deceased individual, in the county in which the individual's estate has been or would have been admitted to probate.

(c)(1) The individual whose right of publicity is the subject of the proposed civil action brought under this Code section, and any person to whom ownership of that right of

publicity has been transferred, may object to the proposed civil action within 20 days from the date of the mailing of the notice referred to in paragraph (1) of subsection (b) of this Code section or within 60 days from the date of publication referred to in paragraph (2) of subsection (b) of this Code section by giving written notice of the objection to the person proposing the civil action. If the individual or transferee does not object to the civil action within the time period specified in this paragraph, the individual or transferee shall be forever barred from objecting to that civil action.

(2) A person may not bring a civil action under this Code section if a person or persons, including the individual whose right of publicity is the subject of the proposed civil action, who collectively own more than 50 percent of the individual's right of publicity object to the proposed civil action.

(d) A person, other than a licensee of an individual's right of publicity, who owns less than all of an individual's right of publicity and who brings a civil action under this chapter shall account to any other person owning an interest in that right of publicity to the extent of the other person's interest with respect to any net recovery in a civil action less the person's costs of collection and reasonable attorney's fees.

51-5A-7.

(a)(1) A person who violates Code Section 51-5A-2 shall be liable in a civil action to the person injured by the violation for the following:

(A) Actual damages, including any profits derived from and attributable to the unauthorized use of an individual's persona for a commercial purpose as determined under paragraph (2) of this subsection;

(B) At the election of the plaintiff and in lieu of actual damages, statutory damages in the amount of at least \$2,500.00 and not more than \$10,000.00, as determined in the discretion of the trier of fact, taking into account the willfulness of the violation, the harm to the persona in question, and the ability of the defendant to pay a civil damage award; and

(C) If applicable pursuant to Code Section 51-12-5.1, punitive damages.

(2) The trier of fact shall include any profits derived from and attributable to the unauthorized use of an individual's persona for a commercial purpose in calculating the award of actual damages under subparagraph (a)(1)(A) of this Code section.

(b) Each party has the right to a jury trial of a civil action under this Code section.

(c) A civil action under this chapter shall be brought within four years of the date the violation of Code Section 51-5A-2 is discovered.

(d) A court in which a civil action under this Code section is brought may do any of the following:

(1) Award the prevailing party reasonable attorney's fees, court costs, and expenses of litigation associated with the civil action;

(2) Award treble damages against a party identified in subsection (e) of Code Section 51-5A-2 who has knowledge of the unauthorized use of the persona as prohibited by Code Section 51-5A-2;

(3) Order temporary or permanent injunctive relief; and

(4) Order the impoundment, on terms the court considers reasonable, of both of the following during the pendency of a civil action under this chapter:

(A) Products, merchandise, goods, or other materials alleged to have been made or used in violation of Code Section 51-5A-2; and

(B) Plates, molds, and matrices, or the specific violative portions of masters, tapes, negatives, digital recordings, electronic media, or other items, from which products, merchandise, goods, or other materials may be manufactured or reproduced.

(e) As part of a final judgment, a court may order the destruction or other reasonable disposition of items described in paragraph (4) of subsection (d) of this Code section.

51-5A-8.

The remedies provided for in this chapter are cumulative to any other remedies provided for by state or federal law or common law.

51-5A-9.

(a) This chapter shall not apply to any of the following:

(1)(A) A literary work, dramatic work, fictional work, historical work, audiovisual work, or musical work regardless of the media in which the work appears or is transmitted, other than an advertisement or commercial announcement not exempt under subparagraph (D) of this paragraph;

(B) Material that has political or newsworthy value;

(C) Original works of fine art; or

(D) An advertisement or commercial announcement for a use permitted by subparagraphs (A) through (C) of this paragraph;

(2) The use of an individual's name to truthfully identify the individual as the author of or contributor to a written work or the performer of a recorded performance under circumstances in which the written work or the recorded performance is otherwise lawfully reproduced, exhibited, or broadcast;

(3) The use of an aspect of an individual's persona in connection with the broadcast or reporting of an event or topic of general or public interest;

(4) The use of the persona of an individual solely in the individual's role as a member of the public if the individual is not named or otherwise singled out as an individual;

(5) A use of an individual's persona by an institution of higher education if all of the following apply:

(A) The individual is or was a student at, or a member of the faculty or staff of, the institution of higher education; and

(B) The use of the individual's persona is for educational purposes or for the promotion of the institution of higher education and its educational or institutional objectives; or

(6) The use of the persona of an individual that is protected by the First Amendment to the United States Constitution as long as the use does not convey or reasonably suggest endorsement by the individual whose persona is at issue.

(b) This chapter shall not affect rights or privileges recognized under the Georgia Constitution or United States Constitution.

51-5A-10.

Any person who violates paragraph (3) of subsection (a) of Code Section 51-5A-2 shall upon conviction be guilty of a misdemeanor. A criminal penalty imposed under this Code section shall be cumulative to any civil remedy under this chapter."

SECTION 5.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 6.

All laws and parts of laws in conflict with this Act are repealed.